

**PROGRAMMATIC AGREEMENT
AMONG THE
NATIONAL PARK SERVICE
(U.S. DEPARTMENT OF THE INTERIOR),
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE
MINNESOTA STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF 36 CFR 800
FOR ACTIVITIES RELATED TO SECTION 106
OF THE NATIONAL HISTORIC PRESERVATION ACT
IN
VOYAGEURS NATIONAL PARK**

WHEREAS, the National Park Service (NPS), the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers executed a Nationwide Programmatic Agreement effective October 1, 1995 (1995 Nationwide PA), pursuant to Section 800.13 of the regulations then in place (36 CFR Part 800) (1986) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) for planning, operating, managing and administering the National Park System; and

WHEREAS, Stipulation V (C) of the 1995 Nationwide PA provides for park-specific agreements independent of and supplemental to the 1995 Nationwide PA; and

WHEREAS, the NPS at Voyageurs National Park (Voyageurs or park) has determined that park programs for planning, design, construction, operations, and maintenance may have an effect on properties included in, or eligible for inclusion in the National Register of Historic Places; and

WHEREAS, the NPS completed a General Management Plan/Visitor Use and Facilities Plan in 2002 that provides management direction for Voyageurs; and

WHEREAS, Voyageurs has staff or has access to qualified cultural resource specialists who meet, at a minimum, the appropriate qualifications set forth in the Secretary of the Interior's "Professional Qualifications Standards" to carry out programs for cultural resource management, including cultural resource management advisors described in Stipulation III (C)(2) of the 1995 Nationwide PA; and

WHEREAS, the NPS notified the public of the formulation of this agreement by posting the draft agreement and notification of review period at park visitor centers and provided an opportunity to comment and will continue to provide opportunities for public involvement as stipulated in Section VI of this agreement; and

WHEREAS, the NPS made a reasonable and good faith effort to provide federally-recognized Indian tribes with the opportunity to participate in the development of this agreement as described in Appendix A and will continue to consult with Indian tribes as stipulated in Section VIII of this agreement; and

Whereas Voyageurs has created a map showing developed areas in the park that is contained in Appendix B; and

Whereas Voyageurs and the Minnesota State Historic Preservation Officer (SHPO) have agreed on a list of non-historic properties that is contained in Appendix C; and

Whereas the park has integrated documentation of NEPA and Section 106 review and uses the Environmental Screening Form to document that review as contained in Appendix D;

NOW, THEREFORE, the NPS, the SHPO, and the Council agree that Voyageurs will carry out its responsibilities for Section 106 as stipulated below:

STIPULATIONS

Voyageurs will ensure that the following measures are carried out:

I. POLICY

Consistent with the 1995 Nationwide PA, Voyageurs will continue to preserve and foster appreciation of the cultural resources in its custody through appropriate programs of protection, research, treatment and interpretation. These efforts are governed by the National Historic Preservation Act, the National Environmental Policy Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, the Archaeological and Historic Preservation Act of 1974, the Native American Graves Protection and Repatriation Act, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, NPS Management Policies, and the Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act. It remains the goal of Voyageurs to implement these programs in consultation with other Federal agencies, the Minnesota SHPO, Indian tribes, local governments, and the public.

Other guidelines, standards, and regulations relevant to this agreement and its purposes include:

- Director's Order 2: Park Planning
- Director's Order 6: Interpretation
- Director's Order 12 and Handbook: Conservation Planning, Environmental Impact Analysis and Decision-Making
- Director's Order 28 and Guideline: Cultural Resource Management
- 36 CFR Part 18, Leases and Exchanges of Historic Property

II. DEFINITIONS

Unless otherwise noted terms used in this PA have the same definition as those found under 36 CFR Part 800 (August 2004). For purposes of this PA, the parties are the Minnesota State Historic Preservation Officer, Voyageurs National Park, and the Advisory Council.

III. IDENTIFICATION AND EVALUATION OF HISTORIC PROPERTIES

- A. Voyageurs will coordinate with the SHPO and tribes activities for research related to resource management needs and the identification, evaluation, and registration of park historic properties. The park will continue to fulfill these responsibilities under Section 110 of the NHPA and 36 CFR Section 800.4 with regard to properties that may meet the criteria for listing on the National

Register of Historic Places and that are potentially significant at national, state, or local levels and mindful of state preservation planning and inventory programs.

- B. Voyageurs will submit data on newly inventoried historic properties annually to the SHPO and in a format agreed upon by both parties. Voyageurs will use site numbers provided by the Minnesota Office of the State Archaeologist for newly recorded archeological sites.

IV. DELEGATION OF AUTHORITY

- A. The park Superintendent is the responsible agency official as defined in Stipulation III. A. of the 1995 Nationwide PA for purposes of Section 106 compliance.
- B. Superintendents are accountable for their performance in Section 106 compliance through NPS procedures for performance and program responsibility.
- C. To further insure that decisions are professionally made, Voyageurs will have the following:
 - 1. At least one staff person who is a Cultural Resource Specialist and is trained and qualified to act as Section 106 coordinator, whose 106 responsibilities are specified in his or her position description and performance standards; and
 - 2. A formally designated set of cultural resource advisors whose qualifications are consistent with OPM standards, the intent of Secretary of the Interior's Professional Qualification Standards in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and the intent of Section 112 (a) (1) (B) of the National Historic Preservation Act. Specialists will provide the park with technical advice and services for cultural resource issues related to Section 106 compliance. Staff in regional offices, other parks, NPS cultural preservation and archeological centers, other government agencies, and specialists and scholars outside the NPS are all possible sources for needed expertise. Specialists who are not federal employees must meet the standards in the Secretary's Professional Qualification Standards.
 - 3. A commitment to training park staff, through periodic training by the Section 106 coordinator that includes an invitation to the SHPO, tribes and cultural resource advisors to participate in that training, so that park staff are generally familiar with Section 106 processes; and

V. PROJECT REVIEW

- A. Voyageurs will carry out Section 106 review pursuant to 36 CFR 800.4—6 on all undertakings not listed in Stipulation V.C. of this agreement. Undertakings will be documented in accordance with Stipulation VI.A of this agreement.
- B. Undertakings listed in Stipulation V. C. of this agreement will be subject to 36 CFR Section 800.3 through 4, which includes plans to involve the public. Further review will be carried out within the NPS by Voyageurs in accordance with 36 CFR Part 800 (August 2004) without further review by the Minnesota SHPO and the Council for Section 106 purposes provided:
 - 1. That Voyageurs and the Minnesota SHPO agree that these undertakings are based upon information adequate to identify and evaluate affected cultural resources;

2. That the NPS finds that their effects on cultural resources listed on or eligible for listing on the National Register of Historic Places will not be adverse based on criteria in 36 CFR Section 800.5; and
 3. That decisions regarding these undertakings are made and carried out in conformity with applicable policies, guidelines, and standards as identified in Stipulation I.
- C. The following undertakings will be reviewed as defined and agreed upon between the park and the SHPO under the terms of Stipulation V.B of this agreement. They are still subject to consultation with tribes pursuant to 36 CFR 800 (August 2004):
1. Routine grounds maintenance, such as grass mowing and hazardous tree removal at park developed areas including the Rainy Lake, Ash River, Kabetogama Lake and Kettle Falls Developed Areas, and the government housing area at Whispering Pines, provided such maintenance does not involve soil disturbance or removal of large amounts of trees or brush. A map of park developed areas is included in Appendix A.
 2. Hazardous tree removal at existing overnight and day use destinations and on existing trails provided trees are not features of cultural landscapes and such maintenance does not involve soil disturbance or removal of large amounts of trees or brush.
 3. Routine maintenance of existing park roads and associated parking lots within the Rainy Lake, Ash River, Kabetogama Lake, Kettle Falls Developed Areas and the government housing area at Whispering Pines. Maintenance of roads includes maintenance of existing ditches, sidewalks, bridges, culverts, signs and parking lots associated with the above roads provided they are within existing construction corridors.
 4. Routine maintenance of existing water and wastewater systems and fueling stations at developed areas including the Rainy Lake, Ash River, Kabetogama Lake, Kettle Falls Developed Areas, the government housing area at Whispering Pines, and campgrounds at King Williams Narrows and King's Cabin.
 5. Routine and cyclic maintenance of buildings in the Rainy Lake Developed Area and Whispering Pines and King's Cabin government quarters, non-contributing buildings in the Kettle Falls Historic District, in the Ash River Developed Area, and the Kabetogama Ranger Station Historic District, the radio repeater stations at Sullivan Bay and Mukooda Lake, and the air quality monitoring station at Ash River.
 6. Routine cleaning and maintenance of existing overnight and day use destinations including rehabilitation of facilities (i.e. replacement of picnic tables, fire grills, vault toilets), re-vegetation of eroded areas and minor stabilization of access areas to prevent shoreline erosion, provided work occurs within existing construction corridors and there are no known archeological resources.
 7. Rehabilitation and minor route variations of existing trails including rehabilitation of existing facilities at trailheads such as vault toilets and signs.
 8. Routine maintenance of snowmobile portages including brushing and light maintenance of existing trail tread.

9. Maintenance or replacement of existing utility lines and transmission lines including the underwater line and on-shore junction boxes for the Hoist Bay to Kettle Falls electrical line.
10. Preservation maintenance of historic structures including repainting to match existing colors, replacement or installation of caulking and weather-stripping, repair or replacement in-kind of window sashes, screens, storm sashes and related hardware by patching, splicing, consolidating or otherwise reinforcing deteriorated materials, repair of door thresholds, panels, screens, storm doors, and related hardware by patching, splicing, consolidating or otherwise reinforcing, and repair or replacement of roofs on historic structures when repaired or replaced in-kind with original appearance and materials.
11. Rehabilitation of the interior of the Kettle Falls Hotel where no changes will be made in sizes of rooms or configuration of spaces and when rehabilitation is limited to such activities as replacement of appliances, cabinets, cupboards, counters, shower stalls, and floor coverings.
12. Maintenance and replacement in-kind of fire detection and suppression systems in the Kettle Falls Hotel.
13. Rehabilitation of the kitchen and bathroom of the Kabetogama Ranger Station where no changes will be made in sizes of rooms or configuration of spaces and when rehabilitation is limited to such activities as replacement of appliances, cabinets, cupboards, counters, shower stalls, and floor coverings.
14. Removal of non-historic properties where removal is accomplished with hand tools and no ground disturbance will occur. A list of non-historic properties is included in Appendix B.
15. Maintenance and replacement of existing signs along the park boundary, on trails, at overnight and day use destinations and in the Rainy Lake, Ash River, Kettle Falls, Kabetogoma Developed Areas and the government housing area at Whispering Pines. Erection of new signs along existing trails, at overnight and day use destinations, in the Rainy Lake Developed Area, the government housing area at Whispering Pines, and temporary signs erected for protection of resources.
16. Natural resource monitoring and research projects provided actions do not involve soil disturbance and tribal consultation has been completed, if required.
17. Activities related to Integrated Pest Management and control of exotic species provided actions to mitigate problems meet the Secretary of the Interior's Standards for the Treatment of Historic Properties and actions do not have the potential to impact ethnographic resources.
18. Diagnostic testing of historic properties if completed by a cultural resource professional.
19. Repair and replacement of existing docks provided location and design remain the same.
20. Fire hazard reduction activities including fire and mechanical methods provided activities are included in Voyageurs' approved Fire Management Plan of October 2002, do not involve soil disturbance, tribal consultation on specific burn plans has been completed, and post-reduction archeological monitoring is coordinated with the park's archeological advisor.

- 21. Drainage modifications around historic buildings where archeological investigation has been conducted and no cultural resources are present.
- 22. Installation of environmental monitoring units, such as weather, water, air quality and natural science monitoring units, provided such installations do not involve soil disturbance or impact historic properties, cultural landscapes or ethnographic resources.
- 23. Non-destructive testing for radon gas, asbestos, lead-based paint, lead pipes, and hazardous materials and waste and mitigation of hazardous materials in non-historic buildings.

VI. NPS PROCEDURES FOR DOCUMENTATION AND REVIEW OF ACTIONS HAVING AN EFFECT ON CULTURAL RESOURCES

- A. Voyageurs will document appropriately all undertakings that may have an effect on cultural resources in Voyageurs. The format for documentation will be consistent with the requirements of 36 CFR 800.11.
- B. Voyageurs will carry out and document reviews by integrating the NEPA and Section 106 processes and using a combined NEPA checklist/Assessment of Actions Having an Effect on Cultural Resources form (Environmental Screening Form) as a format for decision-making and to document the park's review of the effects of projects on cultural resources.
- C. The park's cultural resource advisors will review all Environmental Screening Forms for projects prior to their implementation. Voyageurs will maintain documentation of these reviews. Documentation of reviews not already provided to the SHPO and the Council will be made available by the park for review by the Council and the SHPO upon request.

VII. INVOLVEMENT OF PUBLIC AND CONSULTING PARTIES

- A. Voyageurs will plan for public involvement in accordance with 36 CFR Section 800.2 through 3. The range of public involvement will include informing the public when the Section 106 process is initiated by posting Environmental Screening Forms on park bulletin boards at visitor centers and/or the park's website and other types of forums such as workshops, open houses commensurate with the complexity of the undertaking.
- B. Voyageurs will periodically consult with the SHPO and tribes to identify members of the public and interested parties to involve in Section 106 review.

VIII. CONSULTATION WITH INDIAN TRIBES

- A. The National Historic Preservation Act requires Federal agencies to consult with federally recognized Indian tribes when they attach religious and cultural significance to a historic property that is subject to Section 106 review according to USC Section 470a (d) (6) (B). To initiate consultation, Voyageurs will prepare an annual mailing to tribes identified in Appendix A describing projects that have the potential to affect historic properties and asking if they have an interest in consulting on those projects. Voyageurs will carry out further consultation in accordance with 36 CFR 800 (August 2004) as agreed upon with the tribes.
- B. Voyageurs may develop other consultation agreements with individual tribes independent of this agreement.

- C. In the case of post-review discoveries, Voyageurs will follow procedures in 36 CFR Section 800.13. In addition, Voyageurs will prepare a plan of action to ensure that any Native American burials or human remains, funerary objects, sacred objects and objects of cultural patrimony discovered inadvertently in Voyageurs, are treated according to Federal law, including, but not limited to the Native American Graves Protection and Repatriation Act.

IX. REVIEW AND MONITORING

- A. In accordance with the Memorandum of Agreement with the SHPO dated April 4, 2003, Voyageurs will invite the SHPO to participate in an annual review to evaluate projects and to review implementation of the terms of this Agreement. The park will document each annual review and provide a copy of the documentation to the SHPO.
- B. The Council and the SHPO may monitor activities carried out pursuant to this Agreement, and the Council may review such activities upon request by any party or through its own request. Voyageurs will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.

X. RELATIONSHIP TO OTHER EXISTING AGREEMENTS

- A. This Agreement is intended to supplement the Nationwide PA of 1995 by establishing provisions specific to Voyageurs. General provisions of the 1995 Nationwide PA that are not addressed in this Agreement will remain in effect for Voyageurs, irrespective of this Agreement. References to 36 CFR 800 in this Agreement are understood to refer to the August 2004 revised regulations (36 CFR 800), unless otherwise indicated.
- B. This Agreement goes into effect after the park, SHPO, and Council has signed the Agreement.

XI. AMENDMENT AND TERMINATION OF AGREEMENT

- A. This Programmatic Agreement ends five years from the date it is signed unless the park, SHPO or Council determine there is a need to amend or terminate the Agreement.
- B. The park, SHPO or Council may request that the Programmatic Agreement be amended, whereupon these parties will consult to consider such amendment. An amendment will go into effect upon written concurrence.
- C. The park, SHPO, or Council may terminate this Programmatic Agreement by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination of this agreement, Voyageurs will comply with the nationwide Programmatic Agreement of 1995 and 36 CFR 800 (August 2004) to carry out Section 106 responsibilities.

XII. DISPUTE RESOLUTION

- A. Should the park, SHPO, tribes, the public, other interested parties or the Council object to decisions or actions pursuant to any portion of this agreement, the Superintendent will consult with the objecting party to resolve the objection. If the park Superintendent or the objecting party determines that the objection cannot be resolved, the Superintendent will forward all documentation relevant to the dispute to the NPS Midwest Regional Director for further consultation among the NPS, the objecting party and other parties as appropriate. The Superintendent will also furnish a copy of the materials to the NPS Associate Director for Cultural Resources, the agency's Federal Preservation Officer. If the objection still cannot be resolved, the Regional Director will submit a written request and relevant documentation not previously furnished, to the Council. Within 30 days after receipt of all pertinent documentation, the Council will either:
1. Provide the Regional Director of the NPS with recommendations, which the Regional Director and Superintendent will take into account in reaching a final decision regarding the dispute; or
 2. Notify the Director of the NPS that it will comment pursuant to 36 CFR Section 800.7 (c), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the Director of NPS with reference to the subject of the dispute, as provided in 36 CFR Section 7 (c).

Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The NPS responsibility to carry out all actions under this Agreement that are not the subjects of this dispute will remain unchanged.

- B. When requested by any person, the Council may consider NPS findings under this agreement pursuant to the provisions of 36 CFR Section 800.9 (a) on public requests to the Council.

NATIONAL PARK SERVICE

By: _____
Superintendent, Voyageurs Date

MINNESOTA STATE HISTORIC PRESERVATION OFFICER

By: _____
State Historic Preservation Officer Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____
Executive Director Date